

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 185 of 1995

with

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SECOND APPEAL NO.187 of 1995

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
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STATE OF GUJARAT

Versus

UJJAVALSINH GANPATRAO GAIKWAD

Appearance:

Mr. L.R. Pujari, AGP for the appellants.

Mr. S.P. Hasurkar for respondent nos.1 and 2

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 03/09/96

ORAL JUDGEMENT

1. Heard learned counsel for the respective parties.
The substantial question of law arising in these appeals is whether on the facts and in the circumstances of the case, the lower appellate court was correct in law in allowing the appeal of the present respondents, and setting aside the decree of the trial court.

2. These appeals are, therefore, admitted. Mr. Hasurkar waives service on behalf of the concerned respondent in each of the appeals.

3. As a result of the hearing certain facts become obvious and are not disputed. Each respondent in the present group of appeals was one of the plaintiffs in the suit in the trial court. By common judgement the trial court allowed the suit in respect of most of the plaintiffs, and granted them the relief they sought for in the suit, but refused relief to the respondent in each of these appeals on the ground that the proper court fees have not been paid on the suit plaint by each of them. In short, therefore, the respondent in each of these appeals suffered the dismissal of his suit claim on the ground of non-payment of proper court fees.

3.1 The respondent in each of these appeals preferred an appeal before the lower appellate court. These appeals were decided by a common judgement, wherein the lower appellate court, by a reasoning confined to one short paragraph, not only allowed the appeals, but also granted the appellants (original plaintiffs) the relief they had sought for in the suit. In other words, the suit was decreed in favour of the appellants in the lower court.

3.2 The lower appellate court has allowed the appeals on a very short ground viz. "in the present appeal the present appellants have paid requisite court fees".

3.3 What the lower appellate court failed to appreciate was that the appellants in appeal were those plaintiffs whose suit prayers and consequently the suits were dismissed for non-payment of court fees. Thus, the lower appellate court ought to have confined its consideration to the point specifically arising in the appeal viz. whether the suit could have been dismissed for non-payment of court fees on the plaint, and ought not to have entered into the merits of the suit claim of such plaintiffs.

4 Even otherwise, the lower appellate court has not discussed, has not considered, and has not given any finding of fact as to whether the requisite court fees have been paid on the suit plaint. The only finding recorded by the lower appellate court is, as quoted hereinabove, that requisite court fees have been paid in the appeal. What the lower appellate court failed to appreciate is that if the requisite court fees have been paid by the appellants in the appeal, at best it would make the appeal maintainable. Assuming that the appeal had become maintainable, the next question is whether the trial court was correct and justified in dismissing those

suit prayers of those plaintiffs who had not paid the requisite court fees on the suit plaint. This question has not been examined by the lower appellate court at all. The lower appellate court has not recorded any finding that appropriate court fees have been paid on the suit plaint by the appellants in the appeals. Even otherwise, learned counsel for the present respondents was unable to point out that the requisite court fees have in fact been paid on the suit plaint.

5. On the facts and in the circumstances of the case it is obvious that the lower appellate court could not have acted on an assumption or even on a finding of fact, that the appellants were similarly situated in all factual aspects as the other plaintiffs who had been granted relief by the trial court, and that since the appellants have paid court fees in the appeal, they are entitled to the same relief as the other plaintiffs i.e. they are entitled to a decree on merits as was passed by the trial court in favour of the other plaintiffs who had in fact paid the requisite court fees on the suit plaint.

6. In view of the aforesaid discussion it becomes obvious that the lower appellate court has completely gone on the wrong track, and has without any justification, not only allowed the appeal, but has also decreed the plaintiffs' suit on merits.

7. The common impugned judgement of the lower appellate court in the relevant appeals is, therefore, quashed and set aside.

8. The matter is remanded back to the lower appellate court for rehearing in the light of the observations made hereinabove.

8.1 The lower appellate court shall rehear the appeals and specifically record a finding as to whether the appellants in those appeals have in fact paid the requisite court fees on the suit plaint.

8.2 The lower appellate court shall also decide, in case it records a finding that appropriate court fees have not been paid on the suit plaint, whether the trial court was justified in law in dismissing the suits of the plaintiffs-appellants.

8.3 In case the lower appellate court comes to a conclusion that the appellants in appeal have in fact paid the requisite court fees on the suit plaint, it shall also examine the question as to whether such court

fees could have been paid in law after the dismissal of the suit.

8.4 The lower appellate court shall also examine whether it has the power and the jurisdiction to permit the plaintiffs to pay the court fees on the suit plaint during the pendency of the appeal.

9. These appeals are, therefore, allowed with no order as to costs.

10. The lower appellate court is directed to rehear and dispose of the appeals as expeditiously as possible inasmuch as they are of the year 1986, preferably before 31st March 1997.
